

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14453 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

VIJAYSINH BHAGWANSINH DABHI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 14453 of 2004
MR ANIL S DAVE for Petitioner No. 1
MRS HB PUNANI AGP Respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 17/01/2005

ORAL JUDGEMENT

1. Leave to amend relief clause.

2. By way of filing this Special Civil Application
under Article 226 of the Constitution of India, the

petitioner has challenged his detention order passed against him by Police Commissioner, Baroda City, on 11th of July, 2004, in exercise of powers conferred upon him under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short) directing detention of present petitioner as dangerous person within the meaning of the PASA Act. The petitioner came to be detained in pursuance of the said order from 11th of July, 2004.

3. The grounds served upon the petitioner as placed on record reveal that the detaining authority took into consideration two types of materials. Firstly, the detaining authority took into consideration investigation papers of the crimes, three in number, registered against the petitioner on 20.5.2004, 15.5.2004 and 31.5.2004, one before City Police Station and two before Sayajiganj Police Station, under Sections 379 and 114 of the Indian Penal Code. In all three cases, it was alleged that the petitioner along with others committed theft of two wheeler vehicles like Hero Honda, TVS Scooty, etc. Secondly, the detaining authority also took into consideration two in-camera statements recorded by sponsoring authority and verified by the detaining authority. One statement disclosed the incident of 22.5.2004, wherein while petitioner was found sitting on motorcycle of witness, and while witness accosted the petitioner, the witness was beaten, causing gathering of crowd, which came to be dispersed by the petitioner and his associates with open knife, putting the crowd in fear. The second incident is of 30.5.2004, wherein the petitioner went to the witness and directed him to keep one Hero Honda possessed by him and to give him Rs. 5,000/-. On refusing, the witness was beaten. Crowd was gathered which came to be dispersed forcibly by the petitioner and his associates with open knife. From the above material, detaining authority came to the conclusion that the petitioner was headstrong and ferocious person and after forming gangs, engaged and indulged in activity of theft. The petitioner, according to detaining authority, was of the tendency to pick up quarrels with innocent persons and with deadly weapons was creating terror and fear in public as to disrupt the public order. Hence, the order under challenge came to be passed by the detaining authority.

4. Learned Advocate Ms.Hema Rana for the petitioner and learned AGP Mrs.Hansa Punani for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority as placed on record by learned AGP is also taken into consideration.

5. Out of various grounds urged on behalf of the petitioner to challenge the order of detention and controverted and opposed by learned AGP, the petition can be disposed of on the ground of whether there was proper application of mind by detaining authority while passing the order of detention.

6. Indisputably, the petitioner was in judicial custody from 1st of June, 2004 in three criminal cases registered against him when the order of detention came to be passed on 11th of July, 2004. According to statement made by learned Advocate for the petitioner, in those three criminal cases, the petitioner came to be released on bail in September, 2004. Thus, right from 1st of June, 2004 to September, 2004, the petitioner was in judicial custody.

7. However, in this respect, the detaining authority reached to the subjective satisfaction that at the time of passing of the detention order though the petitioner was in judicial custody, but at any time, the petitioner was likely to file application for bail and on production of proper surety, he was likely to be released on bail. The detaining authority also reached to the subjective satisfaction that after releasing him on bail, the petitioner was likely to be involved himself in illegal activities.

8. The facts of the case are squarely covered by a decision of the Apex Court in the matter of *AMRITLAL vs. UNION GOVERNMENT*, as reported in AIR 2000 SC 3676. The Apex Court pleased to observe that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail is not a cogent material and detention order based on such material is liable to be quashed.

9. In the above view of the matter, it is clear that the petitioner has not submitted any bail application before the competent court to release him on bail when the detention order came to be passed. In other words, there was no material at all before the detaining authority while passing the detention order that petitioner was likely to move application for bail nor there was any material to come to the conclusion that on moving such bail application, the petitioner was likely

to be released on bail. The order in question therefore suffers from the vice of non-application of mind in this respect and the order of detention is required to be quashed and set aside.

10. In the result, the petition is allowed. The order passed by Commissioner of Police, Vadodara City, on 11th of July, 2004, against the petitioner in exercise of powers under Section 3(2) of the PASA Act is hereby quashed and set aside. The petitioner - Vijaysinh Bhagwansinh Dabhi is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. VORA, J.)

p.n.nair